

**BEFORE THE PUBLIC UTILITIES COMMISSION OF THE STATE OF CALIFORNIA**

Industry Entertainment,

Complainant,

vs.

SBC Pacific Bell,

Defendant.

Case 02-09-035  
(Filed September 26, 2002)

**SCOPING MEMO AND RULING OF ASSIGNED COMMISSIONER**

**Summary**

Pursuant to Rules 6(b)(3) and 6.3 of the Commission's Rules of Practice and Procedure, this ruling sets forth the procedural schedule, assigns a presiding hearing officer, and addresses the scope of the proceeding following a prehearing conference (PHC) held by telephone before the assigned administrative law judge (ALJ) on December 3, 2002.

**Background**

The complaint, answer, and discussion at the PHC describe the following dispute. Complainant Industry Entertainment asserts that defendant SBC Pacific Bell (Pacific) acted negligently in March of 1997 when Pacific provided a T-1 trunk and certain other telecommunications system upgrades to complainant, a business customer, but did not advise complainant that approximately 50 existing telephone lines would no longer be necessary. Complainant asserts it

did not learn of the redundancy in its telecommunications system until October 2001, when complainant specifically asked a Pacific account executive to review the efficiency of the system. Complainant asserts that it was unable to discern from Pacific's complex and technical bills that complainant was not using approximately 50 telephone lines. Complainant seeks reparations of \$45,000, which it calculates at \$15 per line per month over five years for each of 50 lines.

Pacific asserts that, in fact, complainant did use some of the 50 telephone lines, at least on occasion, between March 1997 and October 2001. Moreover, Pacific contends that it had no proactive obligation to review and advise complainant about any redundancy in complainants' telecommunications services, that Pacific has violated no statute, tariff or Commission rule or order in the marketing and billing of the telecommunications services at issue, and that the applicable statute of limitations (Pacific cites Pub. Util. Code § 735 and § 736) bars some or all of the reparations sought.

### **Meet and Confer**

By ruling on November 11, 2002, the assigned ALJ directed the parties to meet and confer prior to the PHC in order to discuss the potential for informal resolution of this matter. The PHC transcript relates several factors that appear to have contributed to the failure of that effort. At the PHC, both parties advised the ALJ of their desire to renew settlement discussions and the ALJ directed them to meet and confer within the next two months, in good faith, to explore settlement of this case. I reiterate the ALJ's directive and urge the parties to dispassionately consider the risks and costs of litigation and the strengths and weaknesses of their own positions as they enter into these discussions.

### **Scope of the Proceeding**

Based upon the pleadings filed to date and the representations of the parties at the PHC, it appears that the factual disagreements between the parties are not very extensive. Factual issues to be developed at hearing (including mixed issues of fact and law or fact and policy) include the following:

- What telecommunications equipment and/or services Pacific provided to complainant prior to March 1997 and what equipment and/or services it provided thereafter, including the service order and confirmation letter for the latter generated in or around March 1997;
- The nature of any oral or written communications between Pacific and complainant that led to complainant's determination to change its telecommunications system in or around March 1997 and to make further changes in or around October 2001;
- Pacific's obligations to complainant regarding the provision of business telecommunications equipment and/or services under applicable statutes, tariffs or Commission rules or orders;
- A detailed calculation of any reparations claimed; and
- Whether applicable statutes of limitations bar any portion of the claimed reparations under the facts of this case.

Parties generally should limit their testimony at evidentiary hearing to matters involving disputed issues of fact. Testimony that presents solely legal or policy argument may be stricken. Parties will have an opportunity to address matters of law and policy in briefs.

### **Discovery**

The Commission will not impose a discovery plan on the parties to this complaint proceeding. Proponents may make reasonable discovery requests and

recipients should strive to comply with them, both in a timely fashion. Any discovery disputes that the parties cannot resolve between themselves, after good faith efforts to meet and confer, may be raised by written motion in accordance with Rule 45 of the Commission's Rules of Practice and Procedure and with Commission Resolution ALJ-164. The Commission generally looks to the Code of Civil Procedure for guidance in resolving discovery disputes.

### **Schedule**

The schedule for this proceeding is as follows:

February 14, 2003	Complainant distributes prepared testimony (initial), with copy to ALJ
March 7, 2003	Defendant distributes prepared testimony (responsive), with copy to ALJ
March 25, 2003	Complainant distributes prepared testimony, if any (reply), with copy to ALJ
April 8, 2003 9:00 a.m. to 3:00 p.m.	Evidentiary Hearing, Commission Courtroom, 320 West 4 <sup>th</sup> Street, Los Angeles, CA 90013
Date to be set at Evidentiary Hearing	Concurrent initial briefs filed
Approx. May 23, 2002 (Date to be set at Evidentiary Hearing)	Concurrent reply briefs filed; case submitted
Approx. July 23, 2003	Presiding Officer's decision filed within 60 days of submission

Approx. August 22, 2003	Presiding Officer's decision becomes effective 30 days after mailing (unless appeal filed per Pub. Util. Code § 1701.2(a) and Rule 8.2)
Approx. September 1, 2003 and thereafter	Commission may act on Modified Presiding Officer's Decision (if appeal of POD filed)

The briefing schedule will be set at the evidentiary hearing and, as indicated above, the planned submission date is tied to the date parties file concurrent reply briefs, as are all subsequent, statutory dates. It is my goal to close this case within the 12-month timeframe for resolution of adjudicatory proceedings and this schedule meets that goal. At this time, I foresee no extraordinary circumstances that would warrant an extension of the schedule.

### **Category of Proceeding and Need for Hearing**

This ruling confirms this case as an adjudication scheduled for hearing, as preliminarily determined in the Instructions to Answer.

### **Assignment of Presiding Officer**

ALJ Jean Vieth will be the presiding officer.

### **Ex Parte Rules**

Ex parte communications are prohibited in adjudicatory proceedings under Pub. Util. Code § 1701.2(b) and Rule 7 of the Commission's Rules of Practice and Procedure.

### **IT IS RULED that:**

1. The scope of the proceeding is as set forth herein.
2. The schedule for this proceeding is set forth herein.
3. The presiding officer will be Administrative Law Judge Vieth.

4. This ruling confirms that this proceeding is adjudication scheduled for hearing.

5. Ex parte communications are prohibited under Pub. Util. Code § 1701.2(b) and Rule 7 of the Commission's Rules of Practice and Procedure.

6. Prior to the distribution of prepared testimony, the parties shall meet and confer, in good faith, to explore informal settlement of this case.

Dated December 13, 2002, at San Francisco, California.

/s/ MICHAEL R. PEEVEY

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Michael R. Peevey  
Assigned Commissioner

**CERTIFICATE OF SERVICE**

I certify that I have by mail this day served a true copy of the original attached Scoping Memo and Ruling of Assigned Commissioner on all parties of record in this proceeding or their attorneys of record.

Dated December 13, 2002, at San Francisco, California.

/s/ FANNIE SID

Fannie Sid

**N O T I C E**

Parties should notify the Process Office, Public Utilities Commission, 505 Van Ness Avenue, Room 2000, San Francisco, CA 94102, of any change of address to insure that they continue to receive documents. You must indicate the proceeding number on the service list on which your name appears.

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If specialized accommodations for the disabled are needed, e.g., sign language interpreters, those making the arrangements must call the Public Advisor at (415) 703-2074 or TTY# 1-866-836-7825 or (415) 703-5282 at least three working days in advance of the event.